

NEVADA WESTERN OIL COMPANY

IBLA 77-272

Decided June 10, 1977

Appeal from decision of Nevada State Office denying petition for reinstatement of noncompetitive oil and gas lease N-6078.

Affirmed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease terminated by operation of law for failure to pay advance rental on time may be reinstated only when the lessee shows that his failure to pay the rental on or before the anniversary date was either justifiable or not due to lack of reasonable diligence. Mailing the rental due in Reno from Las Vegas on the day before the anniversary date does not constitute reasonable diligence nor is the inexperience or lack of knowledge of any employee a justifiable reason for the late payment.

2. Oil and Gas Leases: Reinstatement

An oil and gas lease terminated by operation of law for failure to pay the annual rental on or before the anniversary date will not be reinstated solely because the State Office deposited the late rental check.

APPEARANCES: David M. Printz, Esq., Las Vegas, Nevada.

## OPINION BY ADMINISTRATIVE JUDGE RITVO

Nevada Western Oil Company has appealed from a decision dated March 31, 1977, of the Nevada State Office denying its petition for reinstatement of oil and gas lease Nevada 6078. The lease had terminated for failure to pay the annual rental on or before March 1, 1977, its anniversary date, pursuant to 30 U.S.C. § 188(b) (1970).

The pertinent statute and regulation, 30 U.S.C. § 188(b) (1970), and 43 CFR 3108.2-1(c), provide that a lease so terminated may be reinstated, if among other things, the late payment is either justifiable or not due to lack of reasonable diligence.

In its petition for reinstatement and its statement of reasons on appeal, appellant states that a check was prepared on February 25, 1977, but through "an office error" it was not mailed until February 28, 1977. It was received at the State Office on March 2, 1977, 1 day late. The office error arose from the inexperience of the employee and his lack of knowledge of the rules and regulations regarding federal oil and gas leases. In addition to arriving late, the check was made payable to appellant itself instead of to the BLM. The State Office issued a notice of termination which appellant received on March 3, 1977. It thereupon filed its petition for reinstatement with a check for the rental.

The State Office denied the petition on the grounds that the failure to pay the rental timely was not shown to have been either justifiable or not due to lack of reasonable diligence.

[1] The failure to pay timely was due to lack of reasonable diligence. Reasonable diligence is defined in the regulation, 43 CFR 3108.2-1(c)(2) as follows: "Reasonable diligence normally requires the sending or delivery of payments sufficiently in advance to account for normal delays in the collection, transmittal, and delivery of the payment."

Mailing the payment on the day before it is due does not constitute "reasonable diligence." Joseph Wachter, 22 IBLA 96 (1975); Gordon R. Epperson, 16 IBLA 60 (1974). Even for mail between Las Vegas and Reno, normal delivery would take more than 1 day, allowing for normal delays.

Similarly, the failure to pay timely was not justifiable - that is, a delay arising from factors outside appellant's control. Louis Samuel, 8 IBLA 274 (1972); aff'd, Maisano v. Morton, No. 39720 (E. D. Mich., October 12, 1973). The inexperience, confusion, or lack of knowledge of appellant's employees does not make the late

payment "justifiable." Phillips Petroleum Company, 29 IBLA 114 (1972); Mono Power Company, 28 IBLA 289 (1976); Samuel Testagrossa, 25 IBLA 64 (1976).

Finally appellant adverts to the fact that its replacement rental check has been deposited and not repaid. The cashing of that check and placing it in the unearned account, does not constitute any determination as to whether a lease will be reinstated. A refund will be made in due course. See Robert Williams, 24 IBLA 311 (1976); Edward Malz, 24 IBLA 251, 83 I.D. 106 (1976); John J. Nordhoff, 24 IBLA 73 (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Martin Ritvo  
Administrative Judge

I concur:

Douglas E. Henriques  
Administrative Judge

ADMINISTRATIVE JUDGE GROSS CONCURRING:

I concur in the result herein, subject to the interpretation set forth in the dissent in Lone Star Producing Company, 28 IBLA 132, 140-50 (1976).

Joseph W. Goss  
Administrative Judge

30 IBLA 382

